

# House Study Bill 264

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON SWAIM)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to general provisions of the uniform commercial  
2 code relating to the construction and application of its  
3 subject matter, and providing for a contingent effective date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1072HC 82  
6 da/je/5

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1 1 DIVISION I  
1 2 REVISION TO ARTICLE 1  
1 3 ARTICLE 1  
1 4 GENERAL PROVISIONS  
1 5 PART 1  
1 6 ~~SHORT TITLE, CONSTRUCTION, APPLICATION,~~  
1 7 ~~AND SUBJECT MATTER OF THE CHAPTER~~  
1 8 GENERAL PROVISIONS  
1 9 Section 1. Section 554.1101, Code 2007, is amended to read  
1 10 as follows:  
1 11 554.1101 ~~SHORT TITLE~~ TITLES.  
1 12 ~~1. This chapter shall be known and may be cited as the~~  
1 13 ~~Uniform Commercial Code.~~  
1 14 2. This Article may be cited as Uniform Commercial Code ==  
1 15 General Provisions.  
1 16 Sec. 2. NEW SECTION. 554.1102A SCOPE OF ARTICLE.  
1 17 This Article applies to a transaction to the extent that it  
1 18 is governed by another Article of this chapter.  
1 19 Sec. 3. Section 554.1103, Code 2007, is amended to read as  
1 20 follows:  
1 21 554.1103 ~~SUPPLEMENTARY GENERAL PRINCIPLES OF LAW~~  
1 22 ~~APPLICABLE CONSTRUCTION OF THIS CHAPTER TO PROMOTE ITS~~  
1 23 ~~PURPOSES AND POLICIES == APPLICABILITY OF SUPPLEMENTAL~~  
1 24 ~~PRINCIPLES OF LAW.~~  
1 25 1. This chapter must be liberally construed and applied to  
1 26 promote its underlying purposes and policies, which are:  
1 27 a. to simplify, clarify, and modernize the law governing  
1 28 commercial transactions;  
1 29 b. to permit the continued expansion of commercial  
1 30 practices through custom, usage, and agreement of the parties;  
1 31 and  
1 32 c. to make uniform the law among the various  
1 33 jurisdictions.  
1 34 2. Unless displaced by the particular provisions of this  
1 35 chapter, the principles of law and equity, including the law  
2 1 merchant and the law relative to capacity to contract,  
2 2 principal and agent, estoppel, fraud, misrepresentation,  
2 3 duress, coercion, mistake, bankruptcy, ~~or~~ and other validating  
2 4 or invalidating cause shall supplement its provisions.  
2 5 Sec. 4. Section 554.1104, Code 2007, is amended to read as  
2 6 follows:  
2 7 554.1104 ~~CONSTRUCTION AGAINST IMPLICIT~~ IMPLIED REPEAL.  
2 8 This chapter being a general ~~act~~ Act intended as a unified  
2 9 coverage of its subject matter, no part of it shall be deemed  
2 10 to be impliedly repealed by subsequent legislation if such  
2 11 construction can reasonably be avoided.  
2 12 Sec. 5. Section 554.1105, Code 2007, is amended by  
2 13 striking the section and inserting in lieu thereof the  
2 14 following:  
2 15 554.1105 TERRITORIAL APPLICATION OF THE CHAPTER ==  
2 16 PARTIES' POWER TO CHOOSE APPLICABLE LAW.  
2 17 1. In this section:

2 18 a. "Domestic transaction" means a transaction other than  
2 19 an international transaction.  
2 20 b. "International transaction" means a transaction that  
2 21 bears a reasonable relation to a country other than the United  
2 22 States.  
2 23 2. This section applies to a transaction to the extent  
2 24 that it is governed by another Article of this chapter.  
2 25 3. Except as otherwise provided in this section:  
2 26 a. an agreement by parties to a domestic transaction that  
2 27 any or all of their rights and obligations are to be  
2 28 determined by the law of this state or of another state is  
2 29 effective, whether or not the transaction bears a relation to  
2 30 the state designated; and  
2 31 b. an agreement by parties to an international transaction  
2 32 that any or all of their rights and obligations are to be  
2 33 determined by the law of this state or of another state or  
2 34 country is effective, whether or not the transaction bears a  
2 35 relation to the state or country designated.  
3 1 4. In the absence of an agreement effective under  
3 2 subsection 3, and except as provided in subsections 5 and 6,  
3 3 the rights and obligations of the parties are determined by  
3 4 the law that would be selected by application of this state's  
3 5 conflict of laws principles.  
3 6 5. If one of the parties to a transaction is a consumer,  
3 7 the following rules apply:  
3 8 a. An agreement referred to in subsection 3 is not  
3 9 effective unless the transaction bears a reasonable relation  
3 10 to the state or country designated.  
3 11 b. Application of the law of the state or country  
3 12 determined pursuant to subsection 3 or 4 may not deprive the  
3 13 consumer of the protection of any rule of law governing a  
3 14 matter within the scope of this section, which both is  
3 15 protective of consumers and may not be varied by agreement:  
3 16 (1) of the state or country in which the consumer  
3 17 principally resides, unless subparagraph (2) applies; or  
3 18 (2) if the transaction is a sale of goods, of the state or  
3 19 country in which the consumer both makes the contract and  
3 20 takes delivery of those goods, if such state or country is not  
3 21 the state or country in which the consumer principally  
3 22 resides.  
3 23 6. An agreement otherwise effective under subsection 3 is  
3 24 not effective to the extent that application of the law of the  
3 25 state or country designated would be contrary to a fundamental  
3 26 policy of the state or country whose law would govern in the  
3 27 absence of agreement under subsection 4.  
3 28 7. To the extent that this chapter governs a transaction,  
3 29 if one of the following provisions of this chapter specifies  
3 30 the applicable law, that provision governs and a contrary  
3 31 agreement is effective only to the extent permitted by the law  
3 32 so specified:  
3 33 a. Section 554.2402;  
3 34 b. Section 554.4102;  
3 35 c. Section 554.5116;  
4 1 d. Section 554.6103;  
4 2 e. Section 554.8110;  
4 3 f. Sections 554.9301 through 554.9307;  
4 4 g. Section 554.12507;  
4 5 h. Sections 554.13105 and 554.13106.  
4 6 Sec. 6. Section 554.1106, subsection 1, Code 2007, is  
4 7 amended to read as follows:  
4 8 1. The remedies provided by this chapter ~~shall~~ must be  
4 9 liberally administered to the end that the aggrieved party may  
4 10 be put in as good a position as if the other party had fully  
4 11 performed but neither consequential or special damages nor  
4 12 penal damages may be had except as specifically provided in  
4 13 this chapter or by other rule of law.  
4 14 Sec. 7. NEW SECTION. 554.1106A USE OF SINGULAR AND  
4 15 PLURAL == GENDER.  
4 16 In this chapter, unless the statutory context otherwise  
4 17 requires:  
4 18 1. words in the singular number include the plural, and  
4 19 those in the plural include the singular; and  
4 20 2. words of any gender also refer to any other gender.  
4 21 Sec. 8. Section 554.1107, Code 2007, is amended to read as  
4 22 follows:  
4 23 554.1107 WAIVER OR RENUNCIATION OF CLAIM OR RIGHT AFTER  
4 24 BREACH.  
4 25 ~~Any~~ A claim or right arising out of an alleged breach ~~can~~  
4 26 may be discharged in whole or in part without consideration by  
4 27 ~~a written waiver or renunciation signed and delivered by~~  
4 28 agreement of the aggrieved party in an authenticated record.

4 29 Sec. 9. Section 554.1108, Code 2007, is amended to read as  
4 30 follows:

4 31 554.1108 SEVERABILITY.

4 32 If any provision or clause of this chapter or its  
4 33 application ~~thereof~~ to any person or ~~circumstances~~  
4 34 ~~circumstance~~ is held invalid, ~~such the~~ invalidity ~~shall does~~  
4 35 not affect other provisions or applications of ~~the this~~  
5 1 chapter which can be given effect without the invalid  
5 2 provision or application, and to this end the provisions of  
5 3 this chapter are ~~declared to be~~ severable.

5 4 Sec. 10. NEW SECTION. 554.1108A RELATION TO ELECTRONIC  
5 5 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

5 6 This Article modifies, limits, and supersedes the federal  
5 7 Electronic Signatures in Global and National Commerce Act, 15  
5 8 U.S.C. } 7001 et seq., except that nothing in this Article  
5 9 modifies, limits, or supersedes } 7001(c) of that Act or  
5 10 authorizes electronic delivery of any of the notices described  
5 11 in } 7003(b) of that Act.

5 12 PART 2

5 13 GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

5 14 Sec. 11. Section 554.1201, Code 2007, is amended to read  
5 15 as follows:

5 16 554.1201 GENERAL DEFINITIONS.

5 17 1. Unless the context otherwise requires, words or phrases  
5 18 defined in this section, or in the additional definitions  
5 19 contained in other Articles of this chapter that apply to  
5 20 particular Articles or Parts thereof, have the meanings  
5 21 stated.

5 22 2. Subject to additional definitions contained in the  
5 23 subsequent other Articles of this chapter which are applicable  
5 24 that apply to specific particular Articles or Parts thereof,  
5 25 and unless the context otherwise requires, in this chapter:

5 26 1- a. "Action" in the sense of a judicial proceeding,  
5 27 includes recoupment, counterclaim, setoff, suit in equity, and  
5 28 any other proceedings in which rights are determined.

5 29 2- b. "Aggrieved party" means a party entitled to ~~resort~~  
5 30 to pursue a remedy.

5 31 3- c. "Agreement", as distinguished from "contract",  
5 32 means the bargain of the parties in fact, as found in their  
5 33 language or by implication inferred from other circumstances,  
5 34 including course of performance, course of dealing, or usage  
5 35 of trade or course of performance as provided in this chapter  
6 1 (sections 554.1205 and 554.2208) section 554.1303. Whether an

6 2 agreement has legal consequences is determined by the  
6 3 provisions of this chapter, if applicable; otherwise by the  
6 4 law of contracts (section 554.1103). (Compare "Contract".)

6 5 4- d. "Bank" means ~~any~~ a person engaged in the business  
6 6 of banking and includes a savings bank, savings and loan  
6 7 association, credit union, and trust company.

6 8 5- e. "Bearer" means ~~the~~ a person in possession of ~~an a~~  
6 9 negotiable instrument, document of title, or certificated  
6 10 security that is payable to bearer or ~~endorsed indorsed~~ in  
6 11 blank.

6 12 6- f. "Bill of lading" means a document evidencing the  
6 13 receipt of goods for shipment issued by a person engaged in  
6 14 the business of transporting or forwarding goods, ~~and includes~~  
6 15 an airbill. "Airbill" means a document serving for air  
6 16 transportation as a bill of lading does for marine or rail  
6 17 transportation, and includes an air consignment note or air  
6 18 waybill.

6 19 7- g. "Branch" includes a separately incorporated foreign  
6 20 branch of a bank.

6 21 8- h. "Burden of establishing" a fact means the burden of  
6 22 persuading the ~~triers~~ trier of fact that the existence of the  
6 23 fact is more probable than its nonexistence.

6 24 9- i. "Buyer in ordinary course of business" means a  
6 25 person that buys goods in good faith, without knowledge that  
6 26 the sale violates the rights of another person in the goods,  
6 27 and in the ordinary course from a person, other than a  
6 28 pawnbroker, in the business of selling goods of that kind. A  
6 29 person buys goods in the ordinary course if the sale to the  
6 30 person comports with the usual or customary practices in the  
6 31 kind of business in which the seller is engaged or with the  
6 32 seller's own usual or customary practices. A person that  
6 33 sells oil, gas, or other minerals at the wellhead or minehead  
6 34 is a person in the business of selling goods of that kind. A  
6 35 buyer in ordinary course of business may buy for cash, by  
7 1 exchange of other property, or on secured or unsecured credit,  
7 2 and may acquire goods or documents of title under a  
7 3 ~~pre-existing preexisting~~ contract for sale. Only a buyer that  
7 4 takes possession of the goods or has a right to recover the

7 5 goods from the seller under Article 2 may be a buyer in  
7 6 ordinary course of business. A "Buyer in ordinary course of  
7 7 business" does not include a person that acquires goods in a  
7 8 transfer in bulk or as security for or in total or partial  
7 9 satisfaction of a money debt is not a buyer in ordinary course  
7 10 of business.

7 11 ~~10. j.~~ "Conspicuous" means, with reference to a term, or  
7 12 clause is conspicuous when it is means so written, displayed,  
7 13 or presented that a reasonable person against whom which it is  
7 14 to operate ought to have noticed it. A printed heading in  
7 15 capitals (as: "Nonnegotiable Bill of Lading") is conspicuous.  
7 16 Language in the body of a form is "conspicuous" if it is in  
7 17 larger or other contrasting type or color. But in a telegram  
7 18 any stated term is "conspicuous". Whether a term or clause is  
7 19 "conspicuous" or not is for a decision by for the court.  
7 20 Conspicuous terms include the following:

7 21 (1) a heading in capitals equal to or greater in size than  
7 22 the surrounding text, or in contrasting type, font, or color  
7 23 to the surrounding text of the same or lesser size; and

7 24 (2) language in the body of a record or display in larger  
7 25 type than the surrounding text, or in contrasting type, font,  
7 26 or color to the surrounding text of the same size, or set off  
7 27 from surrounding text of the same size by symbols or other  
7 28 marks that call attention to the language.

7 29 k. "Consumer" means an individual who enters into a  
7 30 transaction primarily for personal, family, or household  
7 31 purposes.

7 32 ~~11. l.~~ "Contract", as distinguished from "agreement",  
7 33 means the total legal obligation which that results from the  
7 34 parties' agreement as affected determined by this chapter and  
7 35 as supplemented by any other applicable rules of law laws.

8 1 ~~(Compare "Agreement".)~~

8 2 ~~12. m.~~ "Creditor" includes a general creditor, a secured  
8 3 creditor, a lien creditor, and any representative of  
8 4 creditors, including an assignee for the benefit of creditors,  
8 5 a trustee in bankruptcy, a receiver in equity, and an executor  
8 6 or administrator of an insolvent debtor's or assignor's  
8 7 estate.

8 8 ~~13. n.~~ "Defendant" includes a person in the position of  
8 9 defendant in a cross-action or counterclaim, cross-claim, or  
8 10 third-party claim.

8 11 ~~14. o.~~ "Delivery", with respect to instruments an  
8 12 instrument, documents document of title, or chattel paper, or  
8 13 certificated securities means voluntary transfer of  
8 14 possession.

8 15 ~~15. p.~~ "Document of title" includes bill of lading, dock  
8 16 warrant, dock receipt, warehouse receipt or order for the  
8 17 delivery of goods, and also any other document which in the  
8 18 regular course of business or financing is treated as  
8 19 adequately evidencing that the person in possession of it is  
8 20 entitled to receive, hold, and dispose of the document and the  
8 21 goods it covers. To be a document of title, a document must  
8 22 purport to be issued by or addressed to a bailee and purport  
8 23 to cover goods in the bailee's possession which are either  
8 24 identified or are fungible portions of an identified mass.

8 25 ~~16. q.~~ "Fault" means a default, breach, or wrongful act,  
8 26 or omission or breach.

8 27 ~~17. r.~~ "Fungible" with respect to goods or securities  
8 28 "Fungible goods" means:

8 29 (1) goods or securities of which any unit is, by nature or  
8 30 usage of trade, is the equivalent of any other like unit; or

8 31 (2) Goods which goods that by agreement are not fungible  
8 32 shall be deemed fungible for the purposes of this chapter to  
8 33 the extent that under a particular agreement or document  
8 34 unlike units are treated as equivalents equivalent.

8 35 ~~18. s.~~ "Genuine" means free of forgery or counterfeiting.

9 1 ~~19. t.~~ "Good faith", except as otherwise provided in

9 2 Article 5, means honesty in fact in the conduct or transaction  
9 3 concerned and the observance of reasonable commercial  
9 4 standards of fair dealing.

9 5 ~~20. u.~~ "Holder", with respect to a negotiable instrument,  
9 6 means:

9 7 (1) the person in possession if the of a negotiable  
9 8 instrument that is payable either to bearer or, in the case of  
9 9 an instrument payable to an identified person, if the  
9 10 identified that is the person is in possession; or

9 11 (2) "Holder" with respect to a document of title means the  
9 12 person in possession of a document of title if the goods are  
9 13 deliverable either to bearer or to the order of the person in  
9 14 possession.

9 15 ~~21.~~ To "honor" is to pay or to accept and pay, or where a

~~9 16 credit so engages to purchase or discount a draft complying~~  
~~9 17 with the terms of the credit.~~  
9 18 22. v. "Insolvency proceedings" proceeding includes any  
9 19 assignment for the benefit of creditors or other proceedings  
9 20 proceeding intended to liquidate or rehabilitate the estate of  
9 21 the person involved.  
9 22 23. w. A person is "insolvent" who either has "Insolvent"  
9 23 means:  
9 24 (1) having generally ceased to pay that person's debts in  
9 25 the ordinary course of business or cannot pay that person's  
~~9 26 debts other than as a result of a bona fide dispute;~~  
9 27 (2) being unable to pay debts as they become due; or  
9 28 (3) is being insolvent within the meaning of the federal  
9 29 bankruptcy law.  
9 30 24. x. "Money" means a medium of exchange currently  
9 31 authorized or adopted by a domestic or foreign government and,  
9 32 The term includes a monetary unit of account established by an  
9 33 intergovernmental organization or by agreement between two or  
9 34 more nations countries.  
9 35 25. A person has "notice" of a fact when  
10 1 a. ~~the person has actual knowledge of it; or~~  
10 2 b. ~~the person has received a notice or notification of it;~~  
~~10 3 or~~  
10 4 c. ~~from all the facts and circumstances known to the~~  
~~10 5 person at the time in question the person has reason to know~~  
~~10 6 that it exists. A person "knows" or has "knowledge" of a fact~~  
~~10 7 when that person has actual knowledge of it. "Discover" or~~  
~~10 8 "learn" or a word or phrase of similar import refers to~~  
~~10 9 knowledge rather than to reason to know. The time and~~  
~~10 10 circumstances under which a notice or notification may cease~~  
~~10 11 to be effective are not determined by this chapter.~~  
10 12 26. A person "notifies" or "gives" a notice or  
~~10 13 notification to another by taking such steps as may be~~  
~~10 14 reasonably required to inform the other in ordinary course~~  
~~10 15 whether or not such other actually comes to know of it. A~~  
~~10 16 person "receives" a notice or notification when~~  
10 17 a. ~~it comes to that person's attention; or~~  
10 18 b. ~~it is duly delivered at the place of business through~~  
~~10 19 which the contract was made or at any other place held out by~~  
~~10 20 that person as the place for receipt of such communications.~~  
10 21 27. Notice, knowledge or a notice or notification received  
~~10 22 by an organization is effective for a particular transaction~~  
~~10 23 from the time when it is brought to the attention of the~~  
~~10 24 individual conducting that transaction, and in any event from~~  
~~10 25 the time when it would have been brought to that individual's~~  
~~10 26 attention if the organization had exercised due diligence. An~~  
~~10 27 organization exercises due diligence if it maintains~~  
~~10 28 reasonable routines for communicating significant information~~  
~~10 29 to the person conducting the transaction and there is~~  
~~10 30 reasonable compliance with the routines. Due diligence does~~  
~~10 31 not require an individual acting for the organization to~~  
~~10 32 communicate information unless such communication is part of~~  
~~10 33 that individual's regular duties or unless the individual has~~  
~~10 34 reason to know of the transaction and that the transaction~~  
~~10 35 would be materially affected by the information.~~  
11 1 28. y. "Organization" includes means a corporation,  
~~11 2 government or governmental subdivision or agency, business~~  
~~11 3 trust, estate, trust, partnership or association, two or more~~  
~~11 4 persons having a joint or common interest, or any person other~~  
~~11 5 legal or commercial entity than an individual.~~  
11 6 29. z. "Party", as distinct distinguished from "third  
11 7 party", means a person who that has engaged in a transaction  
11 8 or made an agreement within subject to this chapter.  
11 9 30. aa. "Person" includes means an individual, or an  
~~11 10 organization (See section 554.1102) corporation, business~~  
~~11 11 trust, estate, trust, partnership, limited liability company,~~  
~~11 12 association, joint venture, government, governmental~~  
~~11 13 subdivision, agency, or instrumentality, public corporation,~~  
~~11 14 or any other legal or commercial entity.~~  
11 15 31. "Presumption" or "presumed" means that the trier of  
~~11 16 fact must find the existence of the fact presumed unless and~~  
~~11 17 until evidence is introduced which would support a finding of~~  
~~11 18 its nonexistence.~~  
11 19 ab. "Present value" means the amount as of a date certain  
~~11 20 of one or more sums payable in the future, discounted to the~~  
~~11 21 date certain by use of either an interest rate specified by~~  
~~11 22 the parties if that rate is not manifestly unreasonable at the~~  
~~11 23 time the transaction is entered into or, if an interest rate~~  
~~11 24 is not so specified, a commercially reasonable rate that takes~~  
~~11 25 into account the facts and circumstances at the time the~~  
~~11 26 transaction is entered into.~~

11 27 32. ac. "Purchase" means ~~any voluntary transaction~~  
11 28 ~~creating an interest in property, including taking by sale,~~  
11 29 ~~lease, discount, negotiation, mortgage, pledge, voluntary~~  
11 30 ~~lien, security interest, issue, or reissue, or gift, or any~~  
11 31 ~~other voluntary transaction creating an interest in property.~~

11 32 33. ad. "Purchaser" means a person who takes by purchase.  
11 33 ae. "Record" means information that is inscribed on a  
11 34 ~~tangible medium or that is stored in an electronic or other~~  
11 35 ~~medium and is retrievable in perceivable form.~~

12 1 34. af. "Remedy" means any remedial right to which an  
12 2 aggrieved party is entitled with or without resort to a  
12 3 tribunal.

12 4 35. ag. "Representative" ~~includes means a person~~  
12 5 ~~empowered to act for another, including an agent, an officer~~  
12 6 ~~of a corporation or association, and a trustee, executor, or~~  
12 7 ~~administrator of an estate, or any other person empowered to~~  
12 8 ~~act for another.~~

12 9 36. ah. "Rights" "Right" includes ~~remedies remedy.~~

12 10 37. a. ai. "Security interest" means an interest in  
12 11 personal property or fixtures which secures payment or  
12 12 performance of an obligation. ~~The term also "Security~~  
12 13 ~~interest" includes any interest of a consignor and a buyer of~~  
12 14 ~~accounts, chattel paper, a payment intangible, or a promissory~~  
12 15 ~~note in a transaction that is subject to Article 9. The~~  
12 16 ~~"Security interest" does not include the special property~~  
12 17 ~~interest of a buyer of goods on identification of those goods~~  
12 18 ~~to a contract for sale under section 554.2401 is not a~~  
12 19 ~~"security interest", but a buyer may also acquire a "security~~  
12 20 ~~interest" by complying with Article 9. Except as otherwise~~  
12 21 ~~provided in section 554.2505, the right of a seller or lessor~~  
12 22 ~~of goods under Article 2 or 13 to retain or acquire possession~~  
12 23 ~~of the goods is not a "security interest", but a seller or~~  
12 24 ~~lessor may also acquire a "security interest" by complying~~  
12 25 ~~with Article 9. The retention or reservation of title by a~~  
12 26 ~~seller of goods notwithstanding shipment or delivery to the~~  
12 27 ~~buyer (section 554.2401) under section 554.2401 is limited in~~  
12 28 ~~effect to a reservation of a "security interest". Whether~~

12 29 ~~b. Whether a transaction in the form of a lease creates a~~  
12 30 ~~lease or security interest "security interest" is determined~~  
12 31 ~~by the facts of each case; however, a transaction creates a~~  
12 32 ~~security interest if the consideration the lessee is to pay~~  
12 33 ~~the lessor for the right to possession and use of the goods is~~  
12 34 ~~an obligation for the term of the lease not subject to~~  
12 35 ~~termination by the lessee, and~~

13 1 ~~(1) the original term of the lease is equal to or greater~~  
13 2 ~~than the remaining economic life of the goods,~~

13 3 ~~(2) the lessee is bound to renew the lease for the~~  
13 4 ~~remaining economic life of the goods or is bound to become the~~  
13 5 ~~owner of the goods,~~

13 6 ~~(3) the lessee has an option to renew the lease for the~~  
13 7 ~~remaining economic life of the goods for no additional~~  
13 8 ~~consideration or nominal additional consideration upon~~  
13 9 ~~compliance with the lease agreement, or~~

13 10 ~~(4) the lessee has an option to become the owner of the~~  
13 11 ~~goods for no additional consideration or nominal additional~~  
13 12 ~~consideration upon compliance with the lease agreement~~  
13 13 ~~pursuant to section 554.1203.~~

13 14 c. A transaction does not create a security interest  
13 15 ~~merely because it provides that~~

13 16 ~~(1) the present value of the consideration the lessee is~~  
13 17 ~~obligated to pay the lessor for the right to possession and~~  
13 18 ~~use of the goods is substantially equal to or is greater than~~  
13 19 ~~the fair market value of the goods at the time the lease is~~  
13 20 ~~entered into,~~

13 21 ~~(2) the lessee assumes risk of loss of the goods, or~~  
13 22 ~~agrees to pay taxes, insurance, filing, recording, or~~  
13 23 ~~registration fees, or service or maintenance costs with~~  
13 24 ~~respect to the goods,~~

13 25 ~~(3) the lessee has an option to renew the lease or to~~  
13 26 ~~become the owner of the goods,~~

13 27 ~~(4) the lessee has an option to renew the lease for a~~  
13 28 ~~fixed rent that is equal to or greater than the reasonably~~  
13 29 ~~predictable fair market rent for the use of the goods for the~~  
13 30 ~~term of the renewal at the time the option is to be performed,~~  
13 31 ~~or~~

13 32 ~~(5) the lessee has an option to become the owner of the~~  
13 33 ~~goods for a fixed price that is equal to or greater than the~~  
13 34 ~~reasonably predictable fair market value of the goods at the~~  
13 35 ~~time the option is to be performed.~~

14 1 d. For purposes of this subsection:

14 2 ~~(1) Additional consideration is not nominal if (i) when~~

~~14 3 the option to renew the lease is granted to the lessee the~~  
~~14 4 rent is stated to be the fair market rent for the use of the~~  
~~14 5 goods for the term of the renewal determined at the time the~~  
~~14 6 option is to be performed, or (ii) when the option to become~~  
~~14 7 the owner of the goods is granted to the lessee the price is~~  
~~14 8 stated to be the fair market value of the goods determined at~~  
~~14 9 the time the option is to be performed. Additional~~  
~~14 10 consideration is nominal if it is less than the lessee's~~  
~~14 11 reasonably predictable cost of performing under the lease~~  
~~14 12 agreement if the option is not exercised;~~

~~14 13 (2) "Reasonably predictable" and "remaining economic life~~  
~~14 14 of the goods" are to be determined with reference to the facts~~  
~~14 15 and circumstances at the time the transaction is entered into;~~  
~~14 16 and~~

~~14 17 (3) "Present value" means the amount as of a date certain~~  
~~14 18 of one or more sums payable in the future, discounted to the~~  
~~14 19 date certain. The discount is determined by the interest rate~~  
~~14 20 specified by the parties if the rate is not manifestly~~  
~~14 21 unreasonable at the time the transaction is entered into;~~  
~~14 22 otherwise, the discount is determined by a commercially~~  
~~14 23 reasonable rate that takes into account the facts and~~  
~~14 24 circumstances of each case at the time the transaction was~~  
~~14 25 entered into.~~

~~14 26 38. aj. "Send" in connection with any a writing, record,~~  
~~14 27 or notice means:~~

~~14 28 (1) to deposit in the mail or deliver for transmission by~~  
~~14 29 any other usual means of communication with postage or cost of~~  
~~14 30 transmission provided for and properly addressed and, in the~~  
~~14 31 case of an instrument, to an address specified thereon or~~  
~~14 32 otherwise agreed, or if there be none to any address~~  
~~14 33 reasonable under the circumstances; or~~

~~14 34 (2) The receipt of in any writing other way to cause to be~~  
~~14 35 received any record or notice within the time at which it~~  
~~15 1 would have arrived if properly sent has the effect of a proper~~  
~~15 2 sending.~~

~~15 3 39. ak. "Signed" includes using any symbol executed or~~  
~~15 4 adopted by a party with present intention to authenticate~~  
~~15 5 adopt or accept a writing.~~

~~15 6 al. "State" means a state of the United States, the~~  
~~15 7 District of Columbia, Puerto Rico, the United States Virgin~~  
~~15 8 Islands, or any territory or insular possession subject to the~~  
~~15 9 jurisdiction of the United States.~~

~~15 10 40. am. "Surety" includes a guarantor or other secondary~~  
~~15 11 obligor.~~

~~15 12 41. "Telegram" includes a message transmitted by radio,~~  
~~15 13 teletype, cable, any mechanical method of transmission, or the~~  
~~15 14 like.~~

~~15 15 42. an. "Term" means that portion of an agreement which~~  
~~15 16 that relates to a particular matter.~~

~~15 17 43. ao. "Unauthorized" signature "Unauthorized signature"~~  
~~15 18 means one a signature made without actual, implied, or~~  
~~15 19 apparent authority and. The term includes a forgery.~~

~~15 20 44. "Value". Except as otherwise provided with respect to~~  
~~15 21 negotiable instruments and bank collections (sections~~  
~~15 22 554.3303, 554.4210, and 554.4211) a person gives "value" for~~  
~~15 23 rights if the person acquires them~~

~~15 24 a. in return for a binding commitment to extend credit or~~  
~~15 25 for the extension of immediately available credit whether or~~  
~~15 26 not drawn upon and whether or not a charge-back is provided~~  
~~15 27 for in the event of difficulties in collection; or~~

~~15 28 b. as security for or in total or partial satisfaction of~~  
~~15 29 a pre-existing claim; or~~

~~15 30 c. by accepting delivery pursuant to a pre-existing~~  
~~15 31 contract for purchase; or~~

~~15 32 d. generally, in return for any consideration sufficient~~  
~~15 33 to support a simple contract.~~

~~15 34 45. ap. "Warehouse receipt" means a receipt issued by a~~  
~~15 35 person engaged in the business of storing goods for hire.~~

~~16 1 46. aq. "Written" or "writing" "Writing" includes~~  
~~16 2 printing, typewriting, or any other intentional reduction to~~  
~~16 3 tangible form. "Written" has a corresponding meaning.~~

~~16 4 Sec. 12. Section 554.1202, Code 2007, is amended to read~~  
~~16 5 as follows:~~

~~16 6 554.1202 PRIMA FACIE EVIDENCE BY THIRD PARTY THIRD=PARTY~~  
~~16 7 DOCUMENTS.~~

~~16 8 A document in due form purporting to be a bill of lading,~~  
~~16 9 policy or certificate of insurance, official weigher's or~~  
~~16 10 inspector's certificate, consular invoice, or any other~~  
~~16 11 document authorized or required by the contract to be issued~~  
~~16 12 by a third party shall be is prima facie evidence of its own~~  
~~16 13 authenticity and genuineness and of the facts stated in the~~

16 14 document by the third party.

16 15 Sec. 13. NEW SECTION. 554.1202A NOTICE == KNOWLEDGE.

16 16 1. Subject to subsection 6, a person has "notice" of a  
16 17 fact if the person:

16 18 a. has actual knowledge of it;

16 19 b. has received a notice or notification of it; or

16 20 c. from all the facts and circumstances known to the  
16 21 person at the time in question, has reason to know that it  
16 22 exists.

16 23 2. "Knowledge" means actual knowledge. "Knows" has a  
16 24 corresponding meaning.

16 25 3. "Discover", "learn", or words of similar import refer  
16 26 to knowledge rather than to reason to know.

16 27 4. A person "notifies" or "gives" a notice or notification  
16 28 to another person by taking such steps as may be reasonably  
16 29 required to inform the other person in ordinary course,  
16 30 whether or not the other person actually comes to know of it.

16 31 5. Subject to subsection 6, a person "receives" a notice  
16 32 or notification when:

16 33 a. it comes to that person's attention; or

16 34 b. it is duly delivered in a form reasonable under the  
16 35 circumstances at the place of business through which the  
17 1 contract was made or at another location held out by that  
17 2 person as the place for receipt of such communications.

17 3 6. Notice, knowledge, or a notice or notification received  
17 4 by an organization is effective for a particular transaction  
17 5 from the time it is brought to the attention of the individual  
17 6 conducting that transaction and, in any event, from the time  
17 7 it would have been brought to the individual's attention if  
17 8 the organization had exercised due diligence. An organization  
17 9 exercises due diligence if it maintains reasonable routines  
17 10 for communicating significant information to the person  
17 11 conducting the transaction and there is reasonable compliance  
17 12 with the routines. Due diligence does not require an  
17 13 individual acting for the organization to communicate  
17 14 information unless the communication is part of the  
17 15 individual's regular duties or the individual has reason to  
17 16 know of the transaction and that the transaction would be  
17 17 materially affected by the information.

17 18 Sec. 14. NEW SECTION. 554.1203A LEASE DISTINGUISHED FROM  
17 19 SECURITY INTEREST.

17 20 1. Whether a transaction in the form of a lease creates a  
17 21 lease or security interest is determined by the facts of each  
17 22 case.

17 23 2. A transaction in the form of a lease creates a security  
17 24 interest if the consideration that the lessee is to pay the  
17 25 lessor for the right to possession and use of the goods is an  
17 26 obligation for the term of the lease and is not subject to  
17 27 termination by the lessee, and:

17 28 a. the original term of the lease is equal to or greater  
17 29 than the remaining economic life of the goods;

17 30 b. the lessee is bound to renew the lease for the  
17 31 remaining economic life of the goods or is bound to become the  
17 32 owner of the goods;

17 33 c. the lessee has an option to renew the lease for the  
17 34 remaining economic life of the goods for no additional  
17 35 consideration or for nominal additional consideration upon  
18 1 compliance with the lease agreement; or

18 2 d. the lessee has an option to become the owner of the  
18 3 goods for no additional consideration or for nominal  
18 4 additional consideration upon compliance with the lease  
18 5 agreement.

18 6 3. A transaction in the form of a lease does not create a  
18 7 security interest merely because:

18 8 a. the present value of the consideration the lessee is  
18 9 obligated to pay the lessor for the right to possession and  
18 10 use of the goods is substantially equal to or is greater than  
18 11 the fair market value of the goods at the time the lease is  
18 12 entered into;

18 13 b. the lessee assumes risk of loss of the goods;

18 14 c. the lessee agrees to pay, with respect to the goods,  
18 15 taxes, insurance, filing, recording, or registration fees, or  
18 16 service or maintenance costs;

18 17 d. the lessee has an option to renew the lease or to  
18 18 become the owner of the goods;

18 19 e. the lessee has an option to renew the lease for a fixed  
18 20 rent that is equal to or greater than the reasonably  
18 21 predictable fair market rent for the use of the goods for the  
18 22 term of the renewal at the time the option is to be performed;

18 23 or

18 24 f. the lessee has an option to become the owner of the

18 25 goods for a fixed price that is equal to or greater than the  
18 26 reasonably predictable fair market value of the goods at the  
18 27 time the option is to be performed.

18 28 4. Additional consideration is nominal if it is less than  
18 29 the lessee's reasonably predictable cost of performing under  
18 30 the lease agreement if the option is not exercised.

18 31 Additional consideration is not nominal if:

18 32 a. when the option to renew the lease is granted to the  
18 33 lessee, the rent is stated to be the fair market rent for the  
18 34 use of the goods for the term of the renewal determined at the  
18 35 time the option is to be performed; or

19 1 b. when the option to become the owner of the goods is  
19 2 granted to the lessee, the price is stated to be the fair  
19 3 market value of the goods determined at the time the option is  
19 4 to be performed.

19 5 5. The "remaining economic life of the goods" and  
19 6 "reasonably predictable" fair market rent, fair market value,  
19 7 or cost of performing under the lease agreement must be  
19 8 determined with reference to the facts and circumstances at  
19 9 the time the transaction is entered into.

19 10 Sec. 15. Section 554.1204, Code 2007, is amended to read  
19 11 as follows:

19 12 554.1204 ~~TIME~~ == REASONABLE TIME == "~~SEASONABLY~~"

19 13 SEASONABLENESS.

~~19 14 1. Whenever this chapter requires any action to be taken  
19 15 within a reasonable time, any time which is not manifestly  
19 16 unreasonable may be fixed by agreement.~~

19 17 2. ~~What is~~ Whether a reasonable time for taking any an  
19 18 action required by this chapter is reasonable depends on the  
19 19 nature, purpose, and circumstances of such the action.

19 20 ~~3- 2.~~ An action is taken "seasonably" when seasonably if  
19 21 it is taken at or within the time agreed or, if no time is  
19 22 agreed, at or within a reasonable time.

19 23 Sec. 16. NEW SECTION. 554.1204A VALUE.

19 24 Except as otherwise provided in Articles 3, 4, 5, and 6, a  
19 25 person gives value for rights if the person acquires them:

19 26 1. in return for a binding commitment to extend credit or  
19 27 for the extension of immediately available credit, whether or  
19 28 not drawn upon and whether or not a charge-back is provided  
19 29 for in the event of difficulties in collection;

19 30 2. as security for, or in total or partial satisfaction  
19 31 of, a preexisting claim;

19 32 3. by accepting delivery under a preexisting contract for  
19 33 purchase; or

19 34 4. in return for any consideration sufficient to support a  
19 35 simple contract.

20 1 Sec. 17. Section 554.1205, Code 2007, is amended to read  
20 2 as follows:

20 3 554.1205 COURSE OF PERFORMANCE, COURSE OF DEALING, AND  
20 4 USAGE OF TRADE.

20 5 1. A "course of performance" is a sequence of conduct  
20 6 between the parties to a particular transaction that exists  
20 7 if:

20 8 a. the agreement of the parties with respect to the  
20 9 transaction involves repeated occasions for performance by a  
20 10 party; and

20 11 b. the other party, with knowledge of the nature of the  
20 12 performance and opportunity for objection to it, accepts the  
20 13 performance or acquiesces in it without objection.

20 14 ~~1- 2.~~ A "course of dealing" is a  
20 15 sequence of ~~previous~~ conduct concerning previous transactions  
20 16 between the parties to a particular transaction ~~which that~~ is  
20 17 fairly to be regarded as establishing a common basis of  
20 18 understanding for interpreting their expressions and other  
20 19 conduct.

20 20 ~~2- 3.~~ A ~~usage of trade~~ "usage of trade" is any practice  
20 21 or method of dealing having such regularity of observance in a  
20 22 place, vocation, or trade as to justify an expectation that it  
20 23 will be observed with respect to the transaction in question.  
20 24 The existence and scope of such a usage ~~are to~~ must be proved  
20 25 as facts. If it is established that such a usage is embodied  
20 26 in a ~~written~~ written trade code or similar writing record, the  
20 27 interpretation of the writing record is ~~for the court a~~  
20 28 question of law.

20 29 ~~3- 4.~~ A course of performance or course of dealing  
20 30 between the parties and any or usage of trade in the vocation  
20 31 or trade in which they are engaged or of which they are or  
20 32 should be aware ~~give particular meaning to and supplement or~~  
20 33 ~~qualify terms of an~~ is relevant in ascertaining the meaning of  
20 34 the parties' agreement may give particular meaning to specific  
20 35 terms of the agreement, and may supplement or qualify the

21 1 terms of the agreement. A usage of trade applicable in the  
21 2 place in which part of the performance under the agreement is  
21 3 to occur may be so utilized as to that part of the  
21 4 performance.

21 5 ~~4. 5. The Except as otherwise provided in subsection 6,~~  
21 6 ~~the express terms of an agreement and an any applicable course~~  
21 7 ~~of dealing, or usage of trade shall must be construed wherever~~  
21 8 ~~reasonable as consistent with each other, but when. If such a~~  
21 9 ~~construction is unreasonable:~~

21 10 ~~a. express terms control both prevail over course of~~  
21 11 ~~performance, course of dealing, and usage of trade;~~

21 12 ~~b. course of performance prevails over course of dealing~~  
21 13 ~~and usage of trade; and~~

21 14 ~~c. course of dealing controls prevails over usage of~~  
21 15 ~~trade.~~

21 16 ~~5. 6. An applicable usage of trade in the place where any~~  
21 17 ~~part Subject to section 554.2209, a course of performance is~~  
21 18 ~~to occur shall be used in interpreting the agreement as to~~  
21 19 ~~that part relevant to show a waiver or modification of any~~  
21 20 ~~term inconsistent with the course of the performance.~~

21 21 ~~6. 7. Evidence of a relevant usage of trade offered by~~  
21 22 ~~one party is not admissible unless and until that party has~~  
21 23 ~~given the other party such notice as that the court finds~~  
21 24 ~~sufficient to prevent unfair surprise to the latter other~~  
21 25 ~~party.~~

21 26 Sec. 18. NEW SECTION. 554.1206A PRESUMPTIONS.

21 27 Whenever this chapter creates a "presumption" with respect  
21 28 to a fact, or provides that a fact is "presumed", the trier of  
21 29 fact must find the existence of the fact unless and until  
21 30 evidence is introduced that supports a finding of its  
21 31 nonexistence.

21 32 Sec. 19. Section 554.1207, subsection 1, Code 2007, is  
21 33 amended to read as follows:

21 34 1. A party ~~who, that~~ with explicit reservation of rights,  
21 35 performs or promises performance or assents to performance in  
22 1 a manner demanded or offered by the other party does not  
22 2 thereby prejudice the rights reserved. Such words as "without  
22 3 prejudice", "under protest", or the like are sufficient.

22 4 Sec. 20. Section 554.1208, Code 2007, is amended to read  
22 5 as follows:

22 6 554.1208 OPTION TO ACCELERATE AT WILL.

22 7 A term providing that one party or that party's successor  
22 8 in interest may accelerate payment or performance or require  
22 9 collateral or additional collateral "at will" or ~~when when~~  
22 10 the party ~~deems~~ "deems itself insecure" or in words of similar  
22 11 import ~~shall be construed to mean, means~~ that that party ~~shall~~  
22 12 ~~have has~~ power to do so only if that party in good faith  
22 13 believes that the prospect of payment or performance is  
22 14 impaired. The burden of establishing lack of good faith is on  
22 15 the party against ~~whom which~~ the power has been exercised.

22 16 Sec. 21. Section 554.1209, Code 2007, is amended to read  
22 17 as follows:

22 18 554.1209 SUBORDINATED OBLIGATIONS.

22 19 An obligation may be issued as subordinated to ~~payment~~  
22 20 ~~performance~~ of another obligation of the person obligated, or  
22 21 a creditor may subordinate ~~the creditor's its~~ right to ~~payment~~  
22 22 ~~performance~~ of an obligation by agreement with either the  
22 23 person obligated or another creditor of the person obligated.  
22 24 ~~Such a subordination Subordination~~ does not create a security  
22 25 interest as against either the common debtor or a subordinated  
22 26 creditor. ~~This section shall be construed as declaring the~~  
22 27 ~~law as it existed prior to the enactment of this section and~~  
22 28 ~~not as modifying it.~~

22 29 PART 3

22 30 TERRITORIAL APPLICABILITY AND GENERAL RULES

22 31 Sec. 22. NEW SECTION. 554.1302 VARIATION BY AGREEMENT.

22 32 1. Except as otherwise provided in subsection 2 or  
22 33 elsewhere in this chapter, the effect of provisions of this  
22 34 chapter may be varied by agreement.

22 35 2. The obligations of good faith, diligence,  
23 1 reasonableness, and care prescribed by this chapter may not be  
23 2 disclaimed by agreement. The parties, by agreement, may  
23 3 determine the standards by which the performance of those  
23 4 obligations is to be measured if those standards are not  
23 5 manifestly unreasonable. Whenever this chapter requires an  
23 6 action to be taken within a reasonable time, a time that is  
23 7 not manifestly unreasonable may be fixed by agreement.

23 8 3. The presence in certain provisions of this chapter of  
23 9 the phrase "unless otherwise agreed", or words of similar  
23 10 import, does not imply that the effect of other provisions may  
23 11 not be varied by agreement under this section.

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DIVISION II  
CONFORMING AMENDMENTS TO OTHER ARTICLES

PART A  
ARTICLE 2

Sec. 23. Section 554.2103, subsection 1, paragraph b, Code 2007, is amended by striking the paragraph.

Sec. 24. Section 554.2202, subsection a, Code 2007, is amended to read as follows:

a. by ~~course of performance, course of dealing, or usage of trade (section 554.1205) 554.1303) or by course of performance (section 554.2208); and~~

PART B  
ARTICLE 3

Sec. 25. Section 554.3103, subsection 1, paragraph d, Code 2007, is amended by striking the paragraph.

Sec. 26. Code 554.3103, subsection 1, paragraph j, Code 2007, is amended to read as follows:

j. "Prove" with respect to a fact means to meet the burden of establishing the fact (section 554.1201, subsection ~~g~~ 2, paragraph "h").

PART C  
ARTICLE 4

Sec. 27. Section 554.4104, subsection 3, Code 2007, is amended to read as follows:

3. The following definitions in other Articles apply to this Article:

"Acceptance"	Section 554.3409
"Alteration"	Section 554.3407
"Cashier's check"	Section 554.3104
"Certificate of deposit"	Section 554.3104
"Certified check"	Section 554.3409
"Check"	Section 554.3104
<del>"Good faith"</del>	<del>Section 554.3103</del>
"Holder in due course"	Section 554.3302
"Instrument"	Section 554.3104
"Notice of dishonor"	Section 554.3503
"Order"	Section 554.3103
"Ordinary care"	Section 554.3103
"Person entitled to enforce"	Section 554.3301
"Presentment"	Section 554.3501
"Promise"	Section 554.3103
"Prove"	Section 554.3103
"Teller's check"	Section 554.3104
"Unauthorized signature"	Section 554.3403

PART D  
ARTICLE 5

Sec. 28. Section 554.5103, subsection 3, Code 2007, is amended to read as follows:

3. With the exception of this subsection, subsections 1 and 4, section 554.5102, subsection 1, paragraphs "i" and "j", section 554.5106, subsection 4, and section 554.5114, subsection 4, and except to the extent prohibited in section ~~554.1102, subsection 3, 554.1302~~ and section 554.5117, subsection 4, the effect of this Article may be varied by agreement or by a provision stated or incorporated by reference in an undertaking. A term in an agreement or undertaking generally excusing liability or generally limiting remedies for failure to perform obligations is not sufficient to vary obligations prescribed by this Article.

PART E  
ARTICLE 8

Sec. 29. Section 554.8102, subsection 1, paragraph j, Code 2007, is amended by striking the paragraph.

PART F  
ARTICLE 9

Sec. 30. Section 554.9102, subsection 1, paragraph aq, Code 2007, is amended by striking the paragraph.

PART G  
ARTICLE 12

Sec. 31. Section 554.12105, subsection 1, paragraph f, Code 2007, is amended by striking the paragraph.

Sec. 32. Section 554.12105, subsection 1, paragraph g, Code 2007, is amended to read as follows:

g. "Prove" with respect to a fact means to meet the burden of establishing the fact as defined in section 554.1201, subsection ~~g~~ 2, paragraph "h".

Sec. 33. Section 554.12106, subsection 1, Code 2007, is amended to read as follows:

1. The time of receipt of a payment order or communication canceling or amending a payment order is determined by the

25 23 rules applicable to receipt of a notice stated in section  
25 24 ~~554.1201, subsection 27~~ 554.1202. A receiving bank may  
25 25 establish a cut-off time or times on a funds-transfer business  
25 26 day for the receipt and processing of payment orders, and  
25 27 communications canceling or amending payment orders.  
25 28 Different cut-off times may apply to payment orders,  
25 29 cancellations, or amendments, or to different categories of  
25 30 payment orders, cancellations, or amendments. A cut-off time  
25 31 may apply to senders generally, or different cut-off times may  
25 32 apply to different senders or categories of payment orders.  
25 33 If a payment order or communication canceling or amending a  
25 34 payment order is received after the close of a funds-transfer  
25 35 business day or after the appropriate cut-off time on a  
26 1 funds-transfer business day, the receiving bank may treat the  
26 2 payment order or communication as received at the opening of  
26 3 the next funds-transfer business day.  
26 4 Sec. 34. Section 554.12204, subsection 2, Code 2007, is  
26 5 amended to read as follows:  
26 6 2. Reasonable time under subsection 1 may be fixed by  
26 7 agreement as provided in section ~~554.1204~~ 554.1302, subsection  
26 8 ~~± 2~~, but the obligation of a receiving bank to refund payment  
26 9 as stated in subsection 1 may not otherwise be varied by  
26 10 agreement.

26 11 PART H  
26 12 ARTICLE 13

26 13 Sec. 35. Section 554.13501, subsection 4, Code 2007, is  
26 14 amended to read as follows:

26 15 4. Except as otherwise provided in section ~~554.1106~~  
26 16 554.1305, subsection 1, ~~of or~~ this Article or the lease  
26 17 agreement, the rights and remedies referred to in subsections  
26 18 2 and 3 are cumulative.

26 19 Sec. 36. Section 554.13518, subsection 2, Code 2007, is  
26 20 amended to read as follows:

26 21 2. Except as otherwise provided with respect to damages  
26 22 liquidated in the lease agreement (section 554.13504) or  
26 23 otherwise determined pursuant to agreement of the parties  
26 24 (sections ~~554.1102, subsection 3,~~ 554.1302 and 554.13503), if  
26 25 a lessee's cover is by a lease agreement substantially similar  
26 26 to the original lease agreement and the new lease agreement is  
26 27 made in good faith and in a commercially reasonable manner,  
26 28 the lessee may recover from the lessor as damages (i) the  
26 29 present value, as of the date of the commencement of the term  
26 30 of the new lease agreement, of the rent under the new lease  
26 31 agreement applicable to that period of the new lease term  
26 32 which is comparable to the then remaining term of the original  
26 33 lease agreement minus the present value as of the same date of  
26 34 the total rent for the then remaining lease term of the  
26 35 original lease agreement, and (ii) any incidental or  
27 1 consequential damages, less expenses saved in consequence of  
27 2 the lessor's default.

27 3 Sec. 37. Section 554.13519, subsection 1, Code 2007, is  
27 4 amended to read as follows:

27 5 1. Except as otherwise provided with respect to damages  
27 6 liquidated in the lease agreement (section 554.13504) or  
27 7 otherwise determined pursuant to agreement of the parties  
27 8 (sections ~~554.1102, subsection 3,~~ 554.1302 and 554.13503), if  
27 9 a lessee elects not to cover or a lessee elects to cover and  
27 10 the cover is by lease agreement that for any reason does not  
27 11 qualify for treatment under section 554.13518, subsection 2,  
27 12 or is by purchase or otherwise, the measure of damages for  
27 13 nondelivery or repudiation by the lessor or for rejection or  
27 14 revocation of acceptance by the lessee is the present value,  
27 15 as of the date of the default, of the then market rent minus  
27 16 the present value as of the same date of the original rent,  
27 17 computed for the remaining lease term of the original lease  
27 18 agreement, together with incidental and consequential damages,  
27 19 less expenses saved in consequence of the lessor's default.

27 20 Sec. 38. Section 554.13527, subsection 2, Code 2007, is  
27 21 amended to read as follows:

27 22 2. Except as otherwise provided with respect to damages  
27 23 liquidated in the lease agreement (section 554.13504) or  
27 24 otherwise determined pursuant to agreement of the parties  
27 25 (sections ~~554.1102, subsection 3,~~ 554.1302 and 554.13503), if  
27 26 the disposition is by lease agreement substantially similar to  
27 27 the original lease agreement and the new lease agreement is  
27 28 made in good faith and in a commercially reasonable manner,  
27 29 the lessor may recover from the lessee as damages (i) accrued  
27 30 and unpaid rent as of the date of the commencement of the term  
27 31 of the new lease agreement, (ii) the present value, as of the  
27 32 same date, of the total rent for the remaining lease term of  
27 33 the original lease agreement minus the present value, as of

27 34 the same date, of the rent under the new lease agreement  
27 35 applicable to that period of the new lease term which is  
28 1 comparable to the then remaining term of the original lease  
28 2 agreement, and (iii) any incidental damages allowed under  
28 3 section 554.13530, less expenses saved in consequence of the  
28 4 lessee's default.

28 5 Sec. 39. Section 554.13528, subsection 1, Code 2007, is  
28 6 amended to read as follows:

28 7 1. Except as otherwise provided with respect to damages  
28 8 liquidated in the lease agreement (section 554.13504) or  
28 9 otherwise determined pursuant to agreement of the parties  
28 10 (sections ~~554.1102, subsection 3, 554.1302~~ and 554.13503), if  
28 11 a lessor elects to retain the goods or a lessor elects to  
28 12 dispose of the goods and the disposition is by lease agreement  
28 13 that for any reason does not qualify for treatment under  
28 14 section 554.13527, subsection 2, or is by sale or otherwise,  
28 15 the lessor may recover from the lessee as damages for a  
28 16 default of the type described in section 554.13523, subsection  
28 17 1, or section 554.13523, subsection 3, paragraph "a", or, if  
28 18 agreed, for other default of the lessee, (i) accrued and  
28 19 unpaid rent as of the date of default if the lessee has never  
28 20 taken possession of the goods, or, if the lessee has taken  
28 21 possession of the goods, as of the date the lessor repossesses  
28 22 the goods or an earlier date on which the lessee makes a  
28 23 tender of the goods to the lessor, (ii) the present value as  
28 24 of the date determined under clause (i) of the total rent for  
28 25 the then remaining lease term of the original lease agreement  
28 26 minus the present value as of the same date of the market rent  
28 27 at the place where the goods are located computed for the same  
28 28 lease term, and (iii) any incidental damages allowed under  
28 29 section 554.13530, less expenses saved in consequence of the  
28 30 lessee's default.

#### 28 31 PART I

#### 28 32 PROVISIONS OUTSIDE THE UNIFORM COMMERCIAL CODE

28 33 Sec. 40. Section 3.3, Code 2007, is amended to read as  
28 34 follows:

#### 28 35 3.3 HEADNOTES AND HISTORICAL REFERENCES.

29 1 Proper headnotes may be placed at the beginning of a  
29 2 section of a bill or a Code section, and at the end of a Code  
29 3 section there may be placed a reference to the section number  
29 4 of the Code, or any Iowa Act from which the matter of the Code  
29 5 section was taken. However, except as provided ~~in for~~ the  
29 6 uniform commercial code, pursuant to section 554.1109  
29 7 554.1107, neither said headnotes nor said historical shall not  
29 8 be considered as part of the law as enacted. Historical  
29 9 references shall be considered as a part of the law as  
29 10 enacted.

29 11 Sec. 41. Section 537.3603, subsection 6, Code 2007, is  
29 12 amended to read as follows:

29 13 6. A lease or agreement which constitutes a security  
29 14 interest as defined in section 554.1201, subsection ~~37~~ 2.

29 15 Sec. 42. Section 554D.104, subsection 2, paragraph b, Code  
29 16 2007, is amended to read as follows:

29 17 b. Chapter 554 other than articles 2 and 13 and ~~sections~~  
29 18 ~~554.1107 and 554.1206~~ section 554.1306.

#### 29 19 DIVISION III

#### 29 20 CONTINGENT PROVISIONS

29 21 Sec. 43. Section 554.1201, subsections 5, 6, 14, 15, 20,  
29 22 and 45, Code 2007, are amended to read as follows:

29 23 ~~5- e.~~ "Bearer" means ~~the~~ a person in control of a  
29 24 negotiable electronic document of title or a person in  
29 25 possession of ~~an~~ a negotiable instrument, negotiable tangible  
29 26 document of title, or certificated security ~~that is~~ payable to  
29 27 bearer or ~~endorsed~~ indorsed in blank.

29 28 ~~6- f.~~ "Bill of lading" means a document of title  
29 29 evidencing the receipt of goods for shipment issued by a  
29 30 person engaged in the business of ~~directly or indirectly~~  
29 31 transporting or forwarding goods, ~~and includes an airbill.~~  
29 32 "Airbill" means a document serving for air transportation ~~as a~~  
29 33 bill of lading ~~does for~~ marine or rail transportation, and  
29 34 includes an air consignment note or air waybill. ~~The term~~  
29 35 does not include a warehouse receipt.

30 1 ~~14- o.~~ "Delivery" ~~with respect to instruments an~~  
30 2 electronic document of title means voluntary transfer of  
30 3 control and with respect to an instrument, ~~documents a~~  
30 4 tangible document of title, or chattel paper, or certificated  
30 5 securities means voluntary transfer of possession.

30 6 ~~15- p.~~ "Document of title" ~~includes bill of lading, dock~~  
30 7 warrant, dock receipt, warehouse receipt or order for the  
30 8 delivery of goods, and also any other document which ~~means a~~  
30 9 record (i) that in the regular course of business or financing

30 10 is treated as adequately evidencing that the person in  
30 11 possession or control of ~~it~~ the record is entitled to receive,  
30 12 control, hold, and dispose of the document record and the  
30 13 goods ~~it~~ the record covers and (ii) that purports to be issued  
30 14 by or addressed to a bailee and to cover goods in the bailee's  
30 15 possession which are either identified or are fungible  
30 16 portions of an identified mass. The term includes a bill of  
30 17 lading, transport document, dock warrant, dock receipt,  
30 18 warehouse receipt, and order for delivery of goods. To be a  
30 19 document of title a document must purport to be issued by or  
30 20 addressed to a bailee and purport to cover goods in the  
30 21 bailee's possession which are either identified or are  
30 22 fungible portions of an identified mass. An electronic  
30 23 document of title means a document of title evidenced by a  
30 24 record consisting of information stored in an electronic  
30 25 medium. A tangible document of title means a document of  
30 26 title evidenced by a record consisting of information that is  
30 27 inscribed on a tangible medium.

30 28 ~~20. u. "Holder", with respect to a negotiable instrument,~~  
30 29 means:

30 30 (1) the person in possession ~~if the~~ of a negotiable  
30 31 instrument that is payable either to bearer or, in the case of  
30 32 an instrument payable to an identified person, if the  
30 33 identified that is the person is in possession;

30 34 (2) "Holder" with respect to a document of title means the  
30 35 person in possession of a negotiable tangible document of  
31 1 title if the goods are deliverable either to bearer or to the  
31 2 order of the person in possession; or

31 3 (3) the person in control of a negotiable electronic  
31 4 document of title.

31 5 ~~45. ap. "Warehouse receipt" means a receipt document of~~  
31 6 title issued by a person engaged in the business of storing  
31 7 goods for hire.

31 8 Sec. 44. CONFLICTING PROVISIONS.

31 9 1. If the House File successor to House Study Bill 140, or  
31 10 a Senate File companion to the House File, which revises  
31 11 chapter 554, article 7, of the uniform commercial code, is  
31 12 enacted in the 2007 Regular Session, notwithstanding section  
31 13 4.8, all of the following apply:

31 14 a. The amendments to section 554.1201, subsections 5, 6,  
31 15 14, 15, 20, and 45, Code 2007, as enacted in this division of  
31 16 this Act, prevail over conflicting amendments to section  
31 17 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as  
31 18 enacted in division I of this Act.

31 19 b. The amendments to section 554.1201, subsections 25, 26,  
31 20 and 27, as enacted in division I of this Act, prevail over  
31 21 conflicting amendments to section 554.1201, subsections 25,  
31 22 26, and 27, Code 2007, as enacted in the House File successor  
31 23 to House Study Bill 140, or a Senate File companion to the  
31 24 House File.

31 25 c. The amendments to section 554.1201, subsections 5, 6,  
31 26 14, 15, 20, and 45, Code 2007, as enacted in this division of  
31 27 this Act, prevail over conflicting amendments to section  
31 28 554.1201, subsections 5, 6, 14, 15, 20, and 45, Code 2007, as  
31 29 enacted in the House File successor to House Study Bill 140,  
31 30 or a Senate File companion to the House File.

31 31 2. If the House File successor to House Study Bill 140, or  
31 32 a Senate File companion to the House File, which revises  
31 33 chapter 554, article 7, of the uniform commercial code, is not  
31 34 enacted in the 2007 Regular Session, notwithstanding section  
31 35 4.8, the amendments to section 554.1201, subsections 5, 6, 14,  
32 1 15, 20, and 45, Code 2007, as enacted in division I of this  
32 2 Act, prevail over conflicting amendments to section 554.1201,  
32 3 subsections 5, 6, 14, 15, 20, and 45, Code 2007, as enacted in  
32 4 this division of this Act.

32 5 DIVISION IV  
32 6 TRANSFERS AND RECODIFICATIONS

32 7 Sec. 45. Section 554.1105, Code 2007, is transferred to  
32 8 section 554.1301.

32 9 Sec. 46. Section 554.1106, Code 2007, is transferred to  
32 10 section 554.1305.

32 11 Sec. 47. Section 554.1107, Code 2007, is transferred to  
32 12 section 554.1306.

32 13 Sec. 48. Section 554.1108, Code 2007, is transferred to  
32 14 section 554.1105.

32 15 Sec. 49. Section 554.1109, Code 2007, is transferred to  
32 16 section 554.1107.

32 17 Sec. 50. Section 554.1202, Code 2007, is transferred to  
32 18 section 554.1307.

32 19 Sec. 51. Section 554.1203, Code 2007, is transferred to  
32 20 section 554.1304.

32 21 Sec. 52. Section 554.1204, Code 2007, is transferred to  
32 22 section 554.1205.  
32 23 Sec. 53. Section 554.1205, Code 2007, is transferred to  
32 24 section 554.1303.  
32 25 Sec. 54. Section 554.1207, Code 2007, is transferred to  
32 26 section 554.1308.  
32 27 Sec. 55. Section 554.1208, Code 2007, is transferred to  
32 28 section 554.1309.  
32 29 Sec. 56. Section 554.1209, Code 2007, is transferred to  
32 30 section 554.1310.

32 31 Sec. 57. CODIFICATION.

32 32 1. The Code editor shall codify the following new Code  
32 33 sections, as enacted in this Act, into the following Code  
32 34 sections, which existed immediately prior to the effective  
32 35 date of this Act and which are repealed or transferred

33 1 elsewhere by this Act:

33 2 a. Section 554.1102A to section 554.1102 following its  
33 3 repeal in this Act.

33 4 b. Section 554.1106A to section 554.1106 following its  
33 5 transfer in this Act.

33 6 c. Section 554.1108A to section 554.1108 following its  
33 7 transfer in this Act.

33 8 d. Section 554.1202A to section 554.1202 following its  
33 9 transfer in this Act.

33 10 e. Section 554.1203A to section 554.1203 following its  
33 11 transfer in this Act.

33 12 f. Section 554.1204A to section 554.1204 followings its  
33 13 transfer in this Act.

33 14 g. Section 554.1206A to section 554.1206 following its  
33 15 transfer in this Act.

33 16 2. The Code editor may transfer section 554.1110 to  
33 17 section 554.1110A.

#### 33 18 DIVISION V

##### 33 19 REPEALS

33 20 Sec. 58. Section 554.1102, Code 2007, is repealed.

33 21 Sec. 59. Section 554.1206, Code 2007, is repealed.

33 22 Sec. 60. Section 554.2208, Code 2007, is repealed.

33 23 Sec. 61. Section 554.13207, Code 2007, is repealed.

##### 33 24 EXPLANATION

33 25 This bill amends Article 1 of the Uniform Commercial Code  
33 26 (UCC) codified as Code chapter 554. The Article contains  
33 27 general provisions such as definitions and rules of  
33 28 construction and applicability that govern the Code chapter,  
33 29 unless otherwise excluded in the Article or another Article.  
33 30 The bill is based on recommendations by the national  
33 31 conference of commissioners on uniform state laws and the  
33 32 American law institute.

33 33 The bill addresses almost every section of Article 1, in  
33 34 many cases, to make corrections in terminology and to combine  
33 35 and transfer sections as part of a comprehensive  
34 1 reorganization of the Code chapter. Under the new  
34 2 organizational scheme, the Article is divided into three  
34 3 parts.

34 4 Part 1 contains general provisions relating to the short  
34 5 titles for the Uniform Commercial Code and the Article, the  
34 6 scope of the Article, the construction of the UCC and its  
34 7 applicability, statutory construction against implied repeals,  
34 8 severability, and references to singular and plural language  
34 9 and gender language. A new section provides for electronic  
34 10 signatures under federal law.

34 11 Part 2 provides general definitions and principles of  
34 12 interpretation. For example, the bill amends the definition  
34 13 of "good faith" and makes the term universally applicable  
34 14 throughout the UCC with the exception of Article 5 (governing  
34 15 letters of credit). The old definition referred to honesty in  
34 16 fact in the conduct or transaction concerned. The bill amends  
34 17 the provision to require both honesty in fact and the  
34 18 observance of reasonable commercial standards of fair dealing.  
34 19 There are new sections providing for fair notice of facts and  
34 20 construing knowledge, methods to distinguish leases (see  
34 21 Article 13) from security interests (see Article 9),  
34 22 determination of value, and creating a presumption for a trier  
34 23 of fact. An existing provision is amended which provides for  
34 24 determining reasonableness of time before taking action.

34 25 Part 3 includes a new provision for determining territorial  
34 26 applicability and the power to choose applicable law. Other  
34 27 provisions govern how an agreement may vary the application of  
34 28 the Code chapter. The bill amends provisions which provide  
34 29 for course of dealings and usage of trade. It provides that  
34 30 course of performance may be used to determine the scope and  
34 31 terms of agreements, and eliminates provisions in Article 2

34 32 (governing sales) and Article 13 (governing leases) relating  
34 33 to the same issue. The bill amends and transfers a number of  
34 34 other provisions currently located in other parts of the  
34 35 Article, including provisions relating to obligations of good  
35 1 faith, the liberal administration of remedies, the right to  
35 2 waive or renounce a claim or right following a breach, the use  
35 3 of third-party documents as evidence in court, the reservation  
35 4 of rights, the option of a party to accelerate performance,  
35 5 and the subordination of obligations.  
35 6 The bill includes alternative provisions amending  
35 7 definitional provisions in Article 1 which will take effect  
35 8 depending on whether the general assembly enacts a bill which  
35 9 adopts revisions to UCC Article 7 providing for records  
35 10 relating to warehouse documents and documents of title.  
35 11 Internal references in the bill use the Code section  
35 12 numbers which will be assigned when the bill's provisions are  
35 13 codified in the 2007 Code Supplement.  
35 14 LSB 1072HC 82  
35 15 da:rj/je/5